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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054050
Party	Defendant UNIMUNDO CORP
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Submission	Answer
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Date	06/30/2011
Attachments	Part 1 of 3 Re. Univision v. Unimundo. Cancellation No. 92054050. Registration No. 3889485.pdf (10 pages)(9089772 bytes)

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9 Registrant UNIMUNDO CORPORATION by and through
10 MARCUS FONTAIN, President and CEO, in pro se
11

12 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
13 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
14

15 UNIMUNDO CORPORATION,)	Cancellations No. 92054050
16 a Florida Corporation,)	Registration No. 3889485
17)	
18 Registrant,)	
19 vs.)	UNIMUNDO'S OPPOSITION;
20)	AND MOTION TO DISMISS
21 UNIVISION COMMUNICATIONS,)	UNIVISION'S PETITION TO
22 INC., a California Corporation,)	CANCEL THE UNIMUNDO MARK
23)	FOR FAILURE TO STATE A CLAIM
24 Petitioner.)	
25)	

26 COMES NOW Registrant UNIMUNDO CORPORATION by and through MARCUS
27 FONTAIN, President and CEO, in pro se and files this UNIMUNDO'S OPPOSITION; AND
28 MOTION TO DISMISS UNIVISION'S PETITION TO CANCEL THE UNIMUNDO
TRADEMARK FOR FAILURE TO STATE A CLAIM.

A. INTRODUCTION

1. Unimundo Corporation ("UNIMUNDO") a Florida Corporation, with an office in
California located at 14859 Moorpark Street, Suite 103, Sherman Oaks, CA. 91403, hereby

1 file this Opposition and Motion to Dismiss Univision Communications, Inc. ("Univision")
2 Petition for Cancellation of Registration No. 3889485 for the word mark UNIMUNDO.

3 2. Univision's ("complaint") is based solely on information and belief offering not
4 one shred of evidence and it is framed on the ostensible grounds that: (A) the application for
5 the Mark contains knowingly false material representations of fact by the Registrant, (B) the
6 Mark is likely to cause consumer confusion with respect to Petitioner's family of marks and
7 (C) the Mark dilutes Petitioner's family of famous marks by blurring and tarnishment.

8 3. The Complaint by Univision did not state a claim upon which relief can be granted.
9 Therefore, the USPTO Trademark Trial and Appeal Board should summarily dismiss
10 Univision's Complaint because it is nothing but a smoke and mirrors transparently aimed at
11 deflecting the USPTO attention away from the merits of the UNIMUNDO mark.

12 4. The belated allegations by Univision are unwarranted and blatantly untrue.

13 5. Univision deliberately failed to object to the UNIMUNDO Mark during the time of
14 the publication by the USPTO in the *Official Gazette of the PTO* of the UNIMUNDO mark
15 and as such Univision is now attempting to avoid the consequences of its failure to file a
16 timely objection by filing the belated complaint.

17 6. Univision's Complaint, in keeping with its ways of old, is an attempt to monopolize
18 the Spanish Television broadcasting industry in the U.S. and elsewhere; even on the internet.
19 The complaint is baseless and unwarranted, was filed in bad faith, is malicious and vexatious
20 and the complaint clearly demonstrates that it is an attempt by Univision to unfairly take
21 over the Spanish language "*Internet*" television broadcasting in the U.S.

22 7. Registration of the Trademark UNIMUNDO and use of the UNIMUNDO mark is
23 neither a misappropriation of Univision's unique, valuable and exclusive rights or
24 usurpation, infringement or seizure of any of Univision's Registered Marks. The mere
25 allegation is completely absurd and outrageous.

26 8. Univision has come here unscrupulously in an effort to intimidate UNIMUNDO
27 into submission by attempting to fabricate evidence against UNIMUNDO while at the same
28 time having the audacity to boast that it is the number one Spanish television network in the

1 U.S. The fact remains that Univision is on the verge of bankruptcy with an approximate debt
2 of over Eleven (11) billion dollars and an estimated market valuation of only ten (10) billion
3 dollars. That is hardly a reputable organization or successful company. This alone should
4 shed some light as to why Univision is so desperately attempting to concoct false and
5 misleading allegations or evidence against any perceived or supposed threat or competitor
6 such as UNIMUNDO, at any cost, be it legally or illegally.

8 B. ARGUMENT

9 9. The USPTO Trademark Trial and Appeal Board has the authority to dismiss a
10 complaint for failure to state a claim upon which relief can be granted if the complaint
11 clearly demonstrates that the complainant cannot prove any set of facts that would entitle it
12 to relief. Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2223 (1984);
13 Doe v. Hillsboro ISD, 81 F.3d 1395, 1401-02 (5th Cir. 19956).

14 10. The Complaint by Univision is based on information and belief alleging that:

15 *"B. Registrant Fraudulently Obtained Registration for the Mark 4. On or*
16 *about March 31, 2010, Unimundo Corp. ("Registrant") filed an application*
17 *with the United States Patent and Trademark Office for registration of the*
18 *word mark UNIMUNDO for "television and internet broadcasting" in*
19 *International Class 38, based on alleged use in interstate commerce as of*
20 *March 28, 2010. This application was assigned Serial Number 85003668. The*
21 *application included a declaration signed by Marcus Fountain, President and*
22 *CEO of Unimundo Corp., which states under penalty of perjury that*
23 *Registrant had been using the Mark in commerce as of the filing date of the*
24 *application. 5. On July 29, 2010, in response to an Office Action, Marcus*
25 *Fountain filed another declaration reiterating that the Mark had been used as*
26 *of March 28, 20 in connection with an "internet broadcasting television*
27 *network." 6. On December 14, 2011, the Mark was registered with the*
28 *USPTO, as Registration No. 3,889,485. 28738530-3072922.0016. 7. Upon*

1 information and belief, as of the date the application was filed to the present,
2 the Mark has not been used in connection with "television broadcasting" or
3 an "internet broadcasting television network" as alleged in the declarations
4 filed by Registrant in support of the application for the Mark. 8. Upon
5 information and belief, the verified statements signed by Marcus Fontain,
6 President and CEO of Unimundo Corp., and submitted with and in connection
7 to the application for the Mark contain knowingly false material
8 representations of fact, and therefore constitute fraud in the procurement of a
9 registration. 9. But for these material and willful misrepresentations, the
10 Mark would not have been registered."

11 11. Even if Univision proves each of these above mentioned allegations, Univision
12 has not set forth the essential elements necessary to state a claim upon relief can be granted.

13 12. In the Complaint Univision further alleges that:

14 ***"C. The Mark is Likely to Cause Consumer Confusion with Petitioner's***
15 ***Registered and Senior Marks*** 10. Upon information and belief, the
16 registration of the Mark is a blatant attempt to capitalize on the goodwill and
17 tremendous name recognition of the Petitioner. In a baldly crude fashion,
18 Registrant has attempted to get a free ride by combining Petitioner's Registered
19 Marks with the name of the second largest Spanish language television
20 broadcaster in the US - Telemundo. Consumers who see the "Frankenstein"
21 mark that Registrant has created is likely to think either that the Mark are
22 affiliated with Petitioner or that the Mark and its related services are a joint
23 venture between Petitioner and Telemundo. 11. Registration and use of the
24 Mark has and will continue to cause damage and harm to the Petitioner."

25 13. Univision however, did not allege or identify the necessary elements for the
26 above claim and any inference that UNIMUNDO interferes with the name Univision is
27 patently false.
28

1 14. The claim that the mark UNIMUNDO infringes on the Univision mark and that it
2 causes blurring and tarnishment and it dilutes its value is nothing but fodder.

3 15. It is important to note here that the attorneys for Univision **do not represent** the
4 company "Telemundo" and in the complaint, as well as in the letter of April 22, 2011,
5 maliciously and unethically refer to and argue on behalf of "Telemundo" which is totally
6 unrelated to and completely separate and apart from Univision. In fact both companies are
7 direct competitors in the same markets. Therefore, Univision should know better than to
8 raise the impermissible argument on behalf of "Telemundo." *See Exhibit A.*

9 16. It is highly unethical, improper and unbecoming a lawyer for the attorneys for
10 Univision to include any comments and/or arguments -- or comparisons -- that may apply, or
11 not, to "Telemundo" because neither attorneys "**Jorge Arcinega**" or "**Ellie Hourizadeh**"
12 nor anyone else in the law firm **McDermott Will & Emery, LLP** represent "Telemundo." .

13 17. Whatever allegations or representations made on behalf of "Telemundo" are not
14 just unethical they are highly prejudicial to UNIMUNDO and should be disregarded here, as
15 a trier of fact cannot consider such allegations.

16 18. Univision falsely claims that my UNIMUNDO has attempted to capitalize on the
17 goodwill and tremendous name recognition of Univision, and that the name UNIMUNDO is
18 likely to cause confusion, mistake, and/or deception in the marketplace and that
19 UNIMUNDO's services are somehow affiliated or connected to Univision. *See Exhibit A.*

20 19. Univision falsely claims that the confusion of the use of the Mark UNIMUNDO
21 is further heightened by the fact that my UNIMUNDO's logo may be similar to Univision's.
22 Nothing can be further from the truth. *See Exhibit A.*

23 20. Univision falsely contends that because the Univision mark is "famous,"
24 UNIMUNDO's use of a confusingly similar brand name and logo, within the same genre,
25 will have the effect of diluting Univision's mark. *See Exhibit A.*

26 21. Univision should not be able to avoid the consequences, employing one of the
27 largest law firms in Los Angeles with their battery of attorneys, having failed to file a timely
28 objection and by deliberately ignoring Official *Gazette of the PTO* when it gave worldwide

1 notice that UNIMUNDO had applied for the trademark. Univision had the opportunity then
2 to oppose the UNIMUNDO mark but failed to do so. Univision and its attorneys cannot have
3 it both ways!

4 22. Because the UNIMUNDO mark has now been registered, UNIMUNDO's
5 registration is irrefutably *prima facie* evidence of the validity of the mark in commerce, its
6 ownership, and of its exclusive right to use it in commerce on or in connection with the
7 goods or services specified in the registration.

8 23. On April 22, 2011, Univision's attorney sent a coercive and misleading letter to
9 UNIMUNDO attempting to make a valid comparison of the UNIMUNDO logo "U" design
10 where Univision preposterously claimed that the "U" design belongs to Univision. In a
11 *sleight-of-hand* the comparisons were not in color, making the *side-to-side* comparisons
12 totally deceiving and knowing full well that Supreme Court case law clearly prohibits the
13 *side-by-side* comparison of logos. See *Exhibit A*.

14 24. UNIMUNDO's logo is a "U" design which consists of solid blue colors, dark and
15 light and with a solid white streak tail-like design inside. See www.unimundotv.com.

16 25. Univision's logo as it appears today on its web page www.univision.com and in
17 www.wikipedia.org/wiki/Univision is an unclear and undefined "U." In fact, it does not
18 even look like a "U." Univision call its log a "*Tulip*" where the top left quarter is *purple*
19 with a twist to the left, a *green* square on the top right, a *red* pie on the lower left hand
20 corner and a light *blue* pie on the lower right hand corner, none which in combination
21 identify a letter "U" furthermore, the logo is then cut horizontally and vertically dividing it
22 into four (4) color parts: **purple, green, red and blue**. The UNIMUNDO logo and the
23 Univision logos are completely dissimilar by way of shape, design, color and meaning and
24 any allegation of semblance is delusional.

25 26. The trademark names of Univision and UNIMUNDO are also dissimilar.
26 Univision's claim that the two names can be confusing because they both have "Uni" is
27 outrageous and preposterous.
28

1 27. The word "**Uni**" is a generic name for the word "*one*" or "*uno*" in Latin. A
2 *Single one, Unicycle, "Uni"* is also a shortened word for *University*, a character in
3 *'Dungeness and Dragons (TV Series; JJ Uni Records, formally called Universal City*
4 *Records, an urban-type Settlement in Kirov Oblast, Russia, the Supreme Goddess of*
5 *Etruscan Mythology, Uni for sea-urchin in Japanese restaurants, uniball Pens* for some pens
6 and pencils, *Uni for Uniform spaces* in mathematics, *Uni Global Union*, an international
7 trade union federation, a *user-network interface*, which is a junction from which a
8 telecommunications services is connected between the service provider and the end user,
9 *Uniradio*, a radio station in San Diego, CA. "**Uni**" is also the shortened word for **university**;
10 *University Professors Program*, an interdisciplinary program for gifted students at Boston
11 *University; University High School (Irvine, California); University Laboratory High School*
12 *(Urbana, Illinois); Union Nationale Inter-universitaire*, a French right-wing union of
13 *university students; National University of Engineering (Universidad Nacional de*
14 *Ingenieria), Lima, Peru; University of Northern Iowa; Independente University*
15 *(Universidade Independente), Lisbon, Portugal.*

16 28. The word "**Vision**" is also quite generic; the faculty of sight; eyesight: *poor*
17 *vision* and even as applied in trademarks, as it has been used by *Pearle Vision; Plaza Vision*
18 *Center; Uptown Vision; Visual Perception; Vision (Timely Comics), Visions (Magic-The*
19 *gathering- a card game). Vision or visions* also refer to: *Visual* perception, interpreting what
20 is seen; *Visual* system, the sensory mechanism of eyesight; *Vision (spirituality)*,
21 inspirational experiences ; Hallucination, vivid conscious perception in the absence of a
22 stimulus

23 29. The word "**Mundo**" in Spanish or "*world*" in English; *everyone, everybody,*
24 *Mundo (river), river in south-eastern Spain; Mundo, California, unincorporated community*
25 *in Imperial County; Mundo (album), 2002 album by Rubén Blades; Mundo (Hun),*
26 *descendant of Attila the Hun.*

27 30. Univision also makes the false and misleading allegation that somehow
28 UNIMUNDO used words from Univision and Telemundo and put them together to create

1 the mark UNIMUNDO to confuse the public by creating "blurring and tarnishment." This is
2 nothing but a pack of lies. And for the attorneys representing Univision it is patently
3 unethical to make allegations in favor of another company that they do not represent and
4 their lack of ethical behavior may be actionable at the California State Bar level.

5 31. Univision is not entitled to claim ownership of the word "Uni" nor "Mundo."
6 Furthermore, "Telemundo" is not a complainant here, for good reasons, because they too
7 cannot claim ownership over the word "Mundo." Additionally, There has been plenty of
8 case law on this very subject, such as "*domino*" for sugar and spices and pizzas, "*holiday*
9 *inns and holiday outs*," the uses of the word "*world*," "*chico*," and "*golden JJ*" that courts
10 have found to be weak trademarks because they are generic names.

11 32. There is absolutely, no similarity in the logo design "U" or the actual name
12 between UNIMUNDO and Univision. Under current Supreme Court case law; a logo
13 comparison cannot be made *side-by-side*. It must be made independently of each other.

14 33. There is also no similarity whatsoever in the products from Univision and
15 UNIMUNDO, TV broadcasting over the internet, identity of retail outlets, or purchasers, or
16 consumers, or subscribers or members other than the fact that UNIMUNDO and Univision
17 mutually seek the Spanish speaking world as their target market audience.

18 34. UNIMUNDO is not trying to pass-off its product or services for those of
19 Univision. Quite the opposite www.UnimundoTV.com is a music, movie and documentary
20 site or venue for uploading of HD videos by its own members for internet TV viewing much
21 like www.vimeo.com and www.youtube.com. To this end, compare www.univision.com.
22 There are not one iota similarities or any intent by UNIMUNDO to benefit whatsoever from
23 Univision's reputation.

24 35. UNIMUNDO's "U" logo is unquestionably substantially different and
25 distinguishable from Univision, and the same goes for the word UNIMUNDO. There cannot
26 possibly be any confusion by any ordinary consumer, Spanish or not or other purchaser or
27 visitor to the web sites that would be misled into thinking that they have gone into the world
28 of Univision looking for UNIMUNDO and vice versa. "*Univision*" is "*One Vision*," and

1 *"UNIMUNDO" is "One World."* UNIMUNDO by no means is trying to dilute the good
2 name of Univision.

3 36. Some courts have stated, that categorizing a mark is a *"slippery business,"* as
4 things turn on the particular context of the mark' use and the context of its group of users.

5
6 **C. CONCLUSION**

7 WHEREFORE, Univision's Petition to Cancel the Trademark UNIMUNDO should
8 be denied for at least the failure to state a claim filed in bad faith and with malicious intent,
9 specifically designed to cause UNIMUNDO anguish, financial harm, and embarrassment and
10 to harm UNIMUNDO's standing in the entertainment community.

11 Univision's Petition to Cancel the Trademark UNIMUNDO should also be denied on
12 the grounds that the mark UNIMUNDO does not now and will not lessen blur and tarnish the
13 uniqueness of Univision nor will it weaken Univision as a company because both entities
14 and trademarks are extremely dissimilar and will not create confusion in the marketplace.

15 UNIMUNDO strongly disagrees with Univision's deliberately delayed complaint and
16 its position because neither the application for the mark UNIMUNDO itself, nor the mark
17 UNIMUNDO or its "U" logo constitute a violation of the U.S. Trademark Act found in Title
18 15 of the United States Code Sections 1114(1)(A), 1125(a) (1)(A) and 1125(c)(1).

19 Therefore, Univision's complaint should be dismissed and UNIMUNDO should be
20 awarded legal fees and costs according to proof.

21 Executed on June 29, 2011

22 Respectfully submitted,

23 

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April 22, 2011, letter from Attorney Jorge Arciniega on
behalf of Univision to UNIMUNDO alleging Infringement
and Dilution of the Univision Trademarks

Exhibit A